IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28-9-2006

CORAM:

THE HONOURABLE MR.JUSTICE P.SATHASIVAM
and
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

H.C.P.No.746 of 2006

S. Shakila Begam .. Petitioner

Vs.

1.The State of Tamilnadu
rep. by its Secretary to Government,
Prohibition and Excise Department,
Fort St.George,Chennai 600 009.

2.The Commissioner of Police,
Salem City, Salem. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issue of a writ of Habeas Corpus directing the respondents to call for the records pertaining to the detention order passed by the 2nd Respondent in Memo C.M.P. NO. 9/Goonda/Salem City 2006 dated 11.07.2006 against Thiru. R. Sadhik Sheriff, son of Raghuman at Central Prison, at Salem and to direct the responents to produce the detenue R. Sadhik Sheriff before this Court and set him at liberty.

For petitioner : Mr.R.C. Paul Kanagaraj

For respondents : Mr. M. Babu Muthu Meeran
Addl. Public Prosecutor

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ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

The petitioner, who is the wife of one R. Sadhik Sheriff, who was detained as "Goonda" as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu

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Act 14 of 1982), by the impugned detention order dated 11.07.2006, challenge the same in this Petition.

2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost learned counsel for the petitioner submitted that though a representation was made by the petitioner on 21.07.2006 to the detaining authority, viz., Commissioner of Police, Salem City, he has not disposed of the said representation till this date. According to the counsel, failure to consider the said representation by the detaining authority, vitiates the impugned detention order passed by him.

4. Though this point was not specifically stated in the affidavit, learned counsel for the petitioner has placed copy of the said representation dated 21.07.2006, postal receipt evidencing the fact that the same was addressed to the Commissioner of Police, Salem City and also further endorsement from the Chief Post Master, Chennai GPO 600 001 to the effect that a registered cover was sent to the addressee, viz., Commissioner of Police, Salem on 24.07.2006. In addition to the same, Mr. Paul Kanakaraj, learned counsel for the petitioner has also placed a letter from the Chief Post Master, Customer Care Centre, Chennai GPO, 76, Rajaji Salai, Chennai 600 001, which reads as under.

> "In continuation of our letter regarding the Complaint No.60000104012, it is to inform you that the complaint of Non Receipt of Ack./Proof of Delivery of Speed Post Letters with Transaction No.EE421219530IN on 21/07/2006 of 600001 is settled on 07/09/2006 with the following information that 'DELIVERED ON 24/07/2006".

The information by the Chief Post Master in the letter dated 07.09.2006 makes it clear that the representation of the petitioner dated 21.07.2006 was duly delivered on 24.07.2006 to the addressee, viz., Commissioner of Police, Salem City. No doubt, the learned Additional Public Prosecutor has brought to our notice that the detention order passed on 11.07.2006, approved by the Government on 21.07.2006 and in view of the same, after 21.07.2006 the detaining authority has no power to deal with the representation of the petitioner. Though we accept the said claim of the learned Additional Public Prosecutor, in view of the abundant materials that the representation was received by the detaining authority on

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24.07.2006, even after approval by the Government, i.e., on 21.07.2006, he is bound to forward the same to the Government / Advisory Board. Failure to resort such act vitiates the ultimate detention order passed by him. It is settled law that the representation/materials even received after passing of the detention order, approval by the Government, the authority concerned is expected to forward the same to the Advisory Board/Government for disposal by the said authority. In view of the fact that the second respondent has not forwarded the representat6ion dated 21.07.2006 to the named authority as mentioned above, we are of the view that the impugned detention order is liable to quashed; accordingly quashed. On this ground, the order of detention impugned in the petition is set aside and the detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with any other case.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Commissioner of Police,
Salem City, Salem.

2.The Secretary to Government,
Prohibition and Excise Department,
Fort St.George,Chennai 600 009.

3. The Superintendent
Central Prison, Salem

4. The Joint Secretary to Government of Tamil Nadu
Public Law and Order Department,
Fort Saint George
Madras.

5. The Public Prosecutor, High Court, Madras.

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